DOCUMENT RESUME

ED 243 100 CS 208 184

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TITLE Student Press Freedoms: Rights and Responsibilities.
PUB DATE Feb 84
NOTE 23p.; Paper presented at the Annual Meeting of the Western Speech Communication Association (Seattle, WA, February 18-21, 1984).
PUB TYPE Information Analyses (070) -- Speeches/Conference Papers (150)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Academic Freedom; *Censorship; Constitutional Law; *Court Litigation; Freedom of Speech; Guidelines; Higher Education; *Journalism; School Newspapers; Secondary Education; *Student Publications; *Student Rights; Student School Relationship
IDENTIFIERS *First Amendment

ABSTRACT

First Amendment court decisions have generally been consistent in affirming the rights of students against administrative censorship. Despite these decisions, a review of scholastic and collegiate journals indicates that the constitutional rights of students and their journalism advisers or instructors are clearly and frequently being violated. Educational officials often mandate that material submitted by students for newspapers or other media for student expression must be subject to prior review. At the heart of the conflict are administration fears that student expression may not reflect positively upon the school and that the school may be held liable in litigation over libel or slander. In spite of several books and reports on the subject, confusion about student press law prevails. Although guidelines such as editorial policy or codes of ethics are not necessarily a safeguard for either students or administrators, the National Council of College Publications Advisers recommends that at least some guidelines be in effect at institutions so that students, faculty, and administrators may have common ground on which to base discussions of freedom of expression and the First Amendment. (Examples of cases involving First Amendment litigation and a quiz on student press rights are included.) (HTH)

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STUDENT PRESS FREEDOMS:

RIGHTS AND RESPONSIBILITIES

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February 1984
Western Speech Communication Association
Seattle, Washington

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STUDENT PRESS FREEDOMS:
RIGHTS AND RESPONSIBILITIES

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The years since the landmark U.S. Supreme Court decision in Tinker V. Des Moines (1969) have witnessed an increasing number of cases involving student rights and the exercise of free expression, both oral and written. The majority of cases have focused upon those involved written material, for suppression or censorship of oral expression is more difficult to document and in some ways, not as permanent as censorship of the written word.

Moreover, the decisions since Tinker have been generally consistent in affirming the rights of students against administrative censorship. The decisions, rendered in state and federal courts from North Dakota to Texas and Washington to Maine, have reaffirmed that the same First Amendment protections extended the professional media, both print and electronic, also apply to students. Despite the decisions, though, a review of scholastic and collegiate journals indicates that the constitutional rights of students and their advisers or instructors are clearly and frequently being violated. Educational officials often mandate that material submitted by students for newspapers, magazines, newsletters, radio and television broadcasts or other media of student expression must be subjected to prior review. What's more, countless hundreds of faculty members do rewrite and change student copy because they labor under the presumption that they have the ultimate right and responsibility to do so.

They believe it is part of their job.

Two major concerns are at the heart of the conflict. The first is the fear that student expression of ideas may not reflect in a positive fashion upon the school. Apprehension about criticism of personnel, policy and procedure causes some administrators to believe they will lose public support, or even worse, funding, if students are allowed to express freely their opinions.

A second but equally important concern is that of legal liability. The question of who pays if something is libelous or slanderous and results in litigation often prods administrators into requiring prior review of student expression. (1)

It should be underscored at this point that the courts have held that school officials violate the constitutional rights of students if they mandate prior review of student expression. What's more, the decision is not a recent one. It has its roots in the well-known Near V. Minnesota case decided by the U.S. Supreme Court in 1931. But more significant is this: If the schools do not exercise prior restraint, they also are not legally liable for what is expressed.

But the converse is true, too. If school officials--and that includes advisers or instructors who are charged by the administration with performance of review--do insist that student copy be reviewed, the school officials are placed in a position of liability for what is expressed.

It must be emphasized that court decisions which support student rights of expression are those which emanate from public, not private institutions. Those at private schools are apparently judged by a different body of law and have a free hand to censor student expression. (2)

If you are from an institution which has not charged a person or persons with administrative review, then you are blessed--at least legally. But if you work for a public institution which does in fact have a faculty member or an adviser who is responsible for not only the financial and legal but also the editorial operation of one of the student media, you may wish to discuss seriously with senior adminstrators what some of the legal liabilities are.

The position of a faculty adviser or publisher or a news director or station manager of student media is one which is increasingly under scrutiny--both subtle and overt--across the nation. The continual filing of grievances or court cases at both the scholastic and collegiate levels necessitates the need for more awareness, more sensitivity and certainly more legal knowledge among those involved.

The concern is not a new one. For years, students, school officials, parents and the public have been concerned about expression of ideas which might be critical of or might offend some constituency within the system.

Pressures upon the school system, particularly on those persons in charge of student media--literary magazines, yearbooks, newspapers, radio and television--have been exerted. A fairly complete overview of the history of the recent school press and some of the issues it has faced, particularly during the 1960s and 70s, was published by Inglehart. (3) Commissioned by the National Council of College Publications Advisers in 1971, Inglehart's work put in perspective the issues which faced the student press for many years. More important, it set the

groundwork for discussion and policy and procedure recommendations by members of the NCCPA.

However, many of the issues raised by Inglehart in 1973 are still of concern today. Questions such as these--Who ultimately is the publisher of student press? What are the duties and responsibilities of the person(s) appointed as the publisher? What is the difference between a student publication funded in whole or in part by the institution as opposed to those which are financially independent from the institution? Where does advice end and prior restraint begin?--these and similar, oft-repeated questions--prompted this study.

It is apparent that the Inglehart report did not resolve the concerns of the student press 10 years ago, for virtually any student press publication released since that report has explored one or more of the questions posed earlier.

Immediately on the heels of the Inglehart report come an analysis of social, ethical and legal rights of the student press. Albert N. Whiting argued in "The Campus Press: A Dysfunctional Entity" that whenever the campus newspaper's editorial comments and policies were not only abhorrent and contrary to the university's policies but also were inconsistent with constitutional and statutory guarantees of equality and were socially or racially devisive, the institution could not justify any support for the campus newspaper. (4) He further argues that university apprehension about the quality of the student press should be determined in the "free marketplace of ideas." Whiting cited some well-known college newspapers--The Harvard Crimson, The Michigan Daily,

the Daily Texan, Daily Illini, Cornell Sun--as examples of financially independent newspapers which had achieved wide recognition for their professional appearance. He suggested, "As far as the training aspects of a student newspaper are concerned, the study...concludes that an independent newspaper will be more professional." Whiting also suggests that the university-subsidized newspaper (which by extension could also apply to the scholastic press) would have to become better. Poor writing, bad editing and inaccurate reporting would in all liklihood be reduced or eliminated if student journalists knew their reader-subscribers and advertisers were dissatisfied with poor quality.

Organizations dedicated to the school press continue to issue books and periodicals focusing upon the same concerns cited by Inglehart. Allnutt published a guide for recommended school newspaper practices (5), the Student Press Law Center published A Manual for Student Expression in 1976 (6), Dowling, through the Association for Education in Journalism and the ERIC Reading and Communications Skills Committee published still another set of guidelines in 1977 (7); and Dodd analyzed at length the difficulties in her Quill and Scroll article, "Adviser Legal Situation Is Vague, Complex." (8), the debate continued. Hull wrote You Can Print That (Probably): First Amendment Rights for Public High School Publications in 1978. He attempted to analyze legal and situational problems publishers, advisers and students were likely to encounter. (9)

In 1978, a well-known professional journalist and educator, Mario Garcia, issued his book, The New Adviser. (10) The book not only gives advice about the mechanics of publishing but also about the then-perceived "do's and don'ts" of the student press.

Not all the publications were issued nationally. In Arizona, the Arizona Educator Advocate, a tabloid intended for public school teachers, carried an article, "Censorship of School Materials Increasing," in 1979. The article indicated that not just classroom and library materials were being scrutinized but also student publications. (11) Reacting to the continuing controversy about the role and place of student press, the National Council of College Publications Advisers again issued a major work in 1979 with the publication of Trager and Dickerson's College Student Press Law. (12)

This book attempted to set forth some expanded guidelines for the student press-guidelines which gave both publishers and advisers as well as students some latitude.

The University of Wisconsin Extension Division-Communications Programs releases quarterly a comprehensive list of aids and advice to journalism/publications/communications instructors. The Monographs series explored "Student Publications and the School Administration" in 1980. (13)

A national leader in encouraging positive growth and development of the student press, The Newspaper Fund, frequently released information intended to assist school press advisers and instructors about legal and ethical issues. Typical of the material released is the quiz below. (14)

A TEST OF YOUR JOURNALISTIC KNOWLEDGE

_____ 1. A school newspaper reports in a gossip column that although Marie Sheetz and Brian Moorehead were seen at the drive-in the previous weekend, they didn't know what movie was showing. Marie sued the paper for libel. Would she win?

_____ 2. A student streaker is expelled by the principal. An editorial in the next issue critized the action and labeled the principal's action inhumane and stupid. The principal sued for defamation. Could he win?

_____ 3. A sidebar to an indepth report on drug use at the high school featured an interview with a pusher in which many four letter words appear. The words are used as expletives and not to depict sexual conduct The student editors are suspended. Is the principal's action legal?

_____ 4. Angered by the principal's elimination of free periods, the paper writes an editorial condeming the action and calling for students to attend a board of education meeting to demand reinstatement of the periods. Students, angered by the move, hold their own meeting and stage a walkout the day the paper is published. The principal censors the paper, saying the paper caused the walkout, and therefore material disruption of the school. Is the principal right in his actions?

_____ 5. The paper prints a letter to the editor which contains racial slurs against Jews. The principal prohibits further publication, citing defamation and material disruption. Is he correct?

_____ 6. The student editorial board voted to run an advertisment for Planned Parenthood. The principal rejects that and refuses them permission. Is he correct?

_____ 7. The school paper wants to run a series of articles on premarital sex and birth control. The principal attempts to stop publication citing the fact that the school has no sex education classes and the paper, as a class, cannot do anything that a classroom teacher cannot. Is the principal right?

(Answers on page 17)

Another nationally recognized scholastic journalism publication, Quill and Scroll, indicated that despite all the books, articles, journalism conferences and legal decisions, confusion still prevailed about student press law. Two Michigan State University journalism

professors conducted a survey which revealed that students, school press advisers and school administrators in Michigan and Iowa--two states historically known for the excellence of their scholastic and collegiate journalism programs--were in the main unfamiliar with legal decisions affecting the school press. (15)

Lack of familiarity with the law is not restricted to the public school press. The National Council of College Publications Advisers released results of a 1980 survey in the Student Press Law Center Report. Survey results revealed that only 12.8 percent of the 400 members sampled would permit full student control of college and university newspapers. The others sampled indicated they believed they had the obligation to review student-originated material before it was published. The NCCPA suggests--and the suggestion is obviously debatable--"Student publications are precisely that, student publications. Determination of the policies, content, organization and operation of any student publication should be under full student control." (16)

One of the most recent research studies focusing upon the collegiate press was conducted by former faculty publisher of a West Virginia University college daily, Paul A. Atkins. The study, The College Daily in the United States, focused upon policies and procedures at colleges and universities which published daily newspapers. Eighty institutions by mail responded to Atkins' 80-question survey instrument.

Based on results from the survey, Atkins concluded that despite some concern about prior restraint or institutional control of the college press, the majority of the daily newspaper respondents--75 percent--did not believe university control was a critical problem. (17)

Questionable Freedom of Expression

It is doubtful that many students or faculty would question the constitutional right of freedom of expression as long as that right is exercised responsibly. Without doubt, though, the question is that of who is to determine what is or is not responsible expression. (18)

Is the following case an example of questionable student expression?

Washington State:

'Bad Astra' BBQs School

A quiet high school in a suburb of Seattle, Washington became the site of a noisy and highly publicized battle over high school press freedoms this May when five students published and distributed an underground newspaper during Senior Day barbecue.

The five students, all seniors at Renton, Washington's Lindbergh High School, handed out a paper they called the *Bad Astra*. They did not seek the principal's permission to distribute the paper and they did not identify themselves within its pages, both of which were required under Renton School District policy.

"We're entitled to certain inalienable rights, and those rights can't be amended by the school," said Mark Hoben, one of the editors of the *Bad Astra*.

The five editors were told they must perform six hours of community service and prepare a debate of the First Amendment as punishment. All five also had disciplinary letters placed in their files.

The students published the *Bad Astra* because there is no school publication at Lindbergh high. The articles, which were by-lined "Don Quixote" and "Thomas Paine," were critical of the school's attendance policy and many of the teachers, but according to Principal Brian Barker, the students were not punished for the content of the *Bad Astra*, but for breaking the rules.

Area newspapers gave a large amount of coverage to the controversy, and the students enlisted the help of the Washington ACLU and the Student Press Law Center.

Despite the support the students recieved, the school district has stayed with its policies. Nor were their minds changed by a 23-page "brief" submitted by the students which included the SPLC Model Guidlines (reprinted in this issue).

The five students who started the *Bad Astra* have all graduated, but a new group of Lindbergh students intends to bring the paper out this year, and will continue to fight the policies which restrict the press in the Renton School District.

Reprinted from The Student Press Law Center Report, Winter, 1983-84, p. 18.

Not all the questionable matters are as mild as the one in the preceding example. The following case is still under appeal.

Georgia:

Dog of a Suit

What three student editors at the Medical College of Georgia probably viewed as a sarcastic reply to a letter critical of their paper has turned into a $.50,000 libel suit against them and the faculty adviser of the publication.

Susan Brooks, a graduate nursing student at MCG, wrote a letter the to the school newspaper, the *Cadaver*, appealing to the staff to develop a sense of humor that was "less sick." She also asked that the editors "make the *Cadaver* a paper that everyone can read."

Brooks' letter, along with a response from the editors, was printed under the headline, "Graduate Nursing Student Complains or 50 Way To Irritate The Editors."

Editors Brian Stone, Johnny Jarman and Stuart Caplan, stated in reply that their "style of humor is really out of our control." They went on to say that "We have backgrounds different from the rest of you. Our mothers were German Shepards; our fathers were camels, so naturally we love to hump bitches in heat. Say, Ms. Brooks, when do you come in season?"

Brooks filed suit in Georgia trial court, claiming that the response to her letter was libelous, malicious and personally degrading. Stone, Jarman, Caplan and Dr. Thomas S. McDonald, the adviser to the *Cadaver*, pleaded that the statements were merely satirical in nature, and constituted protected speech under the First and Fourteenth Amendments. The three student editors additionally counterclaimed that the suit was diverting them from their medical studies and requested $10,000 for the damage done to them.

The defendants were granted a summary judgment on the original claim by the trial court, but Brooks filed an appeal in early October.

Reprinted from The Student Press Law Center Report. Winter, 1983-84, p. 13.

Not all the issues of questionable free expression or attempts at prior restraint are settled in the courtroom. For instance, at Brigham Young University, the world's largest private institution of higher education, the solution to an issue of student freedom of expression was resolved when the administration in February 1983 banned an independent student newspaper from campus. The 7th East Press, published for about 18 months on a monthly basis, had printed some articles which were critical or questioning of the Church of Jesus Christ of Latter Day Saints. According to the Utah Journalism Review, the ban was initiated by Mormon Church Elder Ezra Taft Benson, also a member of the BYU board of trustees. (19)

There is no question whether private institutions can or cannot exercise censorship or prior restraint over student expression on their campuses. The legal point has been decided on several occasions by courts across the land. The below cartoon addresses this issue.

Source unknown

In other cases, the resulting litigation caused by questions of freedom of expression may have been the result of what at the outset was non-malicious, sometimes silly, behavior or judgment. Even so, the matter may be cause for a lawsuit, as illustrated by the following example.

Indiana:

Woman Sues Over 'Promotion' To Dean

In 1976, an alluring young woman appeared on the cover of the Indiana University-Purdue University at Indianapolis Sagamore, holding a wine glass in one hand and a taco in the other, to commemorate the annual dining guide to the city. No one complained. But when the IUPUI *Sagamore* used that picture in their 1983 April Fools issue, and stated that the lady in question was "Wanta Little, the new Dean of the School of Liberal Arts," the woman, Jan Beres, complained.

SAGAMORE

The IUPUI Newsmagazine

Beres, who sat for the photo seven years ago, is now a professional model in Indianapolis. She has filed suit against the Sagamore, claiming that the use of the photo with the April Fools caption humiliated her.

When the photo was taken, no model's release was used and no contract detailing acceptable uses of the photo was entered into. The photo was discovered in the *Sagamore's* permanent photo file.

At the current time, the suit has not gone to court, and editors of the *Sagamore* say they worry more about getting their paper out than they do about the suit.

Getting the paper out at IUPUI does seem to be something of a major accomplishment at times. The Sagamore has had more than its share of problems in the past year. They have been entangled in arguments over their power to reject advertisements, and they faced a running argument between their publication adviser and the Dean of Student Services over operations of the paper. The adviser has left for a private sector publishing job, and the *Sagamore* currently operates without an official newspaper advisor; a journalism professor is acting as an "unofficial go-between" for the paper and the administration, according to 1983-84 Editor-In-Chief Bill Nolan.

Reprinted from The Student Press Law Center Report, Winter, 1983-84, p. 9.

Publication or Media Boards

No clear-cut solution seems apparent in the continuing debate about student freedom of expression in opposition to administrative or legal constraints on public school and university campuses. However, one proposal which is receiving more and more attention is that of forming publication or media boards to supervise on-campus student media. In fact, publications/media boards are a reality in hundreds of

schools. Yet they are a source of controversy, particularly in light of recent court decisions.

Almost 20 years ago, when the National Council of College Publications Advisers in 1966 mandated a two-year study through its Commission on the Freedoms and Responsibilities of the College Student Press in America, it marked a "first" in the history of examining the status of the student media. Politella described in detail what in fact turned out to be a three-year study in "Guidelines for the Student Press." (20)

One recommendation resulting from that landmark study was that written guidelines be put in place to serve as ground rules for student media. The report emphasized that guidelines should not be restrictive of freedom of expression nor authoritarian in approach but rather ethically and professionally consistent with the commonly accepted tenets of responsible journalism.

Ultimately, the NCCPA published a Code of Professional Standards for Student Publications Advisers. A strong recommendation in that code was that each adviser adopt a set of guidelines which clearly and precisely spell out the First Amendment and legal rights, responsibilities and duties of student publications, student editors, advisers and administrators. Kopenhaver suggests that it is this type of document which can protect students, advisers and institutions from the confusion and controversy surrounding student media. She writes, "Each student publication should have a set of guidelines or an editorial policy and code of ethics that detail the responsibilities of that

publication and set specific journalistic standards to be met in each issue. Such standards--jointly constructed by and agreed upon by the adviser, staff and administrators, can then serve as a quality control mechanism.....: (21)

But guidelines, no matter how carefully drawn, are not a safeguard for either students or administrators. Tom Eveslage of Temple University warns that formal guidelines may delude those involved into believing they have ethical or legal security when in fact none exists. As Eveslage notes:

> *An overwhelming majority of censorship incidents never go to court. You know it, your staff should know it, and you can be confident that the administration knows it. Challenging a set of unconstitutional guidelines in court would take much more time, effort, expense and anguish than most teachers and students want to give.
>
> *To get a document that the administration will support may require too many compromises. The mistaken belief that any guidelines are better than none often results in the sacrifice of constitutional freedoms.
>
> *Perhaps the greatest threat of all--and one that advisors today must guard against--is the tendency to let guidelines become "rules" or "laws" that are imposed by school officials. The danger is that the burden suddenly shifts to the student and publication staff. Several recent developments in the court suggest that school officials may be able to suppress expression using this tactic. (22)

Even with this caveat, it would seem that publications/media boards are in place at many institutions of higher education in the Southwest and West. A prior study indicated that of 17 colleges and universities surveyed, all but two had formal publications/media boards. Careful analysis of the documents enfranchising those boards

revealed that no consistent pattern of organization, structure or administrative pattern was in place. If one may generalize from even these few examples, it would seem universtiy media publications/media boards range from the highly controlled to the totally non-restricted.

For instance, it was apparent that no consistent common denominator was discernable for the following elements in the various institutional documents: 1) number of members on boards, 2) balance between students, faculty and administrators, 3) use of professional journalists on board, 4) designation of publisher or adviser, and 5) adherence to a uniformly accepted code of ethics or canons of journalism-communications. (23)

Some Observations

It is not being suggested that one standard set of guidelines or procedures be adopted by the collegiate press, for such would violate the premise of autonomy and individuality, let alone statutory regulation. However, it does seem reasonable that some uniform practices concerning what is and is not to be in policies and procedures regarding publications boards be developed.

It also would seem the recommendations of the NCCPA make eminently good sense: that some guidelines, no matter what form they take, should be in place at institutions so that students, faculty and administrators do have some common ground on which to base discussions of the critical questions of freedom of expression and the First Amendment. This is not to suggest an absolutist interpretation of the First Amendment. Rather, it is intended to suggest that statements of responsible and professional standards be established so that all parties involved in the

scholastic or collegiate press can affirm the free and conscientious exercise of the First Amendment.

One final point: A set of model guidelines for student media is available through the Student Press Law Center, 800 18th. St., NW, Suite 300, Washington, D.C. 20006. The guidelines, carefully constructed in consultation with legal authorities, represent an effort to particularize both the rights and the responsibilities of school officials and students. The guidelines also attempt to distinguish between what is perceived as responsible behavior in relation to freedom of expression and the constitutional rights and limitations which are imposed or interpreted by law. In sum, guidelines provide some parameters which aid students and school officials in understanding and upholding the rights guaranteed by the First Amendment.

ANSWERS - A Test of Your Journalistic Knowledge

1. Probably, although truth would be defense. The girl's reputation has been attacked.

2. No. Since the principal is a public figure, any reasonable comment is fair comment.

3. No. The use of the words is not obscene and no disruption of school operation occured.

4. No. The paper itself did not call for the walkout or any physically disruptive activity. The students who staged the walkout decided the issue. The paper did not provoke it.

5. No. The concept of prior restraint over further publication was established in the 1931 case of Near vs. Minnesota.

6. No. Students cannot be precluded from publishing their views, or those of advertisers in non-disruptive ways. What can be precluded in advertisements, however, are inducements of illegal acts.

7. No. Once the paper has been established as an open forum, the school cannot regulate the content of the paper. This is true even though the system acts as the publisher.

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